

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

FILED  
U.S. DIST. COURT  
BRUNSWICK DIV.

2005 SEP 22 A 10:21

CLERK   
U.S. DIST. COURT

LAWRENCE RUPERT SMITH,

Plaintiff,

v.

UNITED STATES OF AMERICA;  
INTERNAL REVENUE SERVICE;  
FINANCIAL MANAGEMENT SERVICE,  
and JOHN DOE,

Defendants.

CIVIL ACTION NO.: CV505-065

**MAGISTRATE JUDGE'S ORDER**  
**and REPORT AND RECOMMENDATION**

Plaintiff, who is incarcerated at Coffee Correctional Institution in Nicholls, Georgia, has submitted to the Court for filing a complaint<sup>1</sup> and application seeking to proceed *in forma pauperis*.

Plaintiff seeks to file his complaint under 42 U.S.C. § 1983. He alleges that following his arrest in September 2001, an unknown person using his W-2 forms filed an income tax return in Plaintiff's name and signed his name to the return. Further, he asserts that a refund check in the amount of \$4,540, payable to Plaintiff, was

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<sup>1</sup> Plaintiff previously filed a complaint alleging the same facts as in his current Complaint against the same Defendants and a motion to proceed in forma pauperis in CV505-035. Plaintiff's motion to proceed in forma pauperis was denied by the undersigned on July 29, 2005. (Dkt. 5.) Following the entry of a Report recommending the dismissal of the complaint for failure to state a claim under 42 U.S.C. § 1983, Plaintiff moved to voluntarily dismiss the complaint without prejudice. Plaintiff's motion was granted. (Dkt. 9.)

fraudulently received by someone else. He seeks, *inter alia*, the return of those funds.

Plaintiff states a cognizable claim for relief under 42 U.S.C. § 1983 if the complaint alleges facts showing that his rights as secured by the Constitution and the laws of the United States were violated and that the violation was committed by a person acting under color of state law. Touchstone v. McDermott, 234 F.3d 1133, 1137 (11th Cir. 2000).

Even accepting Plaintiff's allegations as true, he has failed to establish that the named Defendants violated his constitutional rights. Accordingly, Plaintiff's application to proceed *in forma pauperis* is **DENIED**. Furthermore, it is my **RECOMMENDATION** that Plaintiff's Complaint be **DISMISSED** for failure to state a claim under 42 U.S.C. § 1983.

So **ORDERED** and **REPORTED** and **RECOMMENDED**, this 22<sup>nd</sup> day of September, 2005.

  
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JAMES E. GRAHAM  
UNITED STATES MAGISTRATE JUDGE